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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,477	09/15/2003	Peter Dam Nielsen	879A.0141.U1(US)	2898
29683	7590	03/29/2010	EXAMINER	
HARRINGTON & SMITH			RADTKE, MARK A	
4 RESEARCH DRIVE, Suite 202			ART UNIT	
SHELTON, CT 06484-6212			PAPER NUMBER	
			2165	
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			03/29/2010	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/663,477	Applicant(s) NIELSEN ET AL.	
	Examiner MARK A. X RADTKE	Art Unit 2165	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the prior art does not teach "wherein the camera control software application provides for taking a picture and then assigning the picture from a camera menu instead of from a phonebook menu." The Examiner respectfully disagrees.

Specifically, Applicant argues that the "Gallery" menu of the LG reference is separate and distinct from the "Camera" menu. This is incorrect. The Gallery is a submenu of the Camera menu. See step 1 on page 51, where the first step in accessing the Gallery is to "select Camera". Thus, the Gallery is a submenu of the Camera, so anything done (e.g. invoked) by the Gallery is also done by the Camera.

Applicant argues that the LG reference "fails to provide technical details of the kinds of applications" on the phone, and therefore the reference is deficient. The Examiner respectfully disagrees.

The claimed invention is generally directed to user interface improvements in cell phones. User manuals provide a description of the technical capabilities of a phone from a user interface perspective. It is not necessary to teach implementation details of the cell phones to teach the claimed matter. Similarly, Applicant's disclosure does not describe the gate-level implementation of cell phone CPUs to describe user-level applications.

Applicant argues that the "level of skill" required to operate the LG cell phone is "vastly different" than the instant invention. The Examiner respectfully disagrees.

There is no known case law or MPEP section dealing with "level of skill" arguments related to patentability. If Applicant is putting forth a novel theory of patentability, then Applicant may be best served by appealing the case. The Examiner would hesitate to be persuaded by novel legal theories absent explicit guidance from the BPAI, or at least some case law or MPEP guidance to support Applicant's position.

Applicant argues that the in re Venner analysis fails because the Camera and Gallery applications are allegedly separate. The Examiner respectfully disagrees for the reasons given above.

Continuation of 13. Other: The Advisory Action filed 3 March 2010 is hereby withdrawn and replaced with the instant Advisory Action.